O. Essen Supplies

1946.

File No. (T.P.)/46

Legal Department

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Subject:—

Opinions Under the

Essential Supplies (Temporary Powers)

Ordinance, 1946

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C O N T E N T S.

Legal Department File O. Essential Supplies (T.P.)/46

Sr.No.	R.I./O.No.	Subject	pages
1.	O.N. 8231 20-11-46	The Essential Supplies (T.P.) Ordinance, 1946. Whether under the Provisions the ordinance a Dy. Secy. is automatically invested with the powers.	1-3
2.	O.N. 310-Confl. 10-11-46	Sec. 3 - Fixation of rationed article in the rationed area.-	5-7.

S.C. 12/7
5 copies.

PHB 30/7

NGB 30/7

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The question for R.L.A.'s consideration is whether under the provisions of the Essential Supplies (Temporary Powers) Ordinance, 1946, and the Bombay Essential Commodities and Cattle (Control) Act, 1946, a Deputy Secretary to Government is automatically invested with the powers vesting in the Provincial Government of freezing, requisitioning and acquiring the food-grains and cattle-feed orwhether it is necessary that the powers of Government should be specifically delegated to him under the said Ordinance and the Act.

Sub-section (1) of ~~the~~ section 3 of the Essential Supplies (Temporary Powers) Ordinance, 1946, enacts that the Central Government so far as it appears to it to be necessary or expedient for maintaining or increasing supplies of any essential commodity, or for securing their equitable distribution and availability at fair price, may, by notified order, provide for regulating or prohibiting theproduction, supply and distribution thereof, and trade and commerce therein. Sub-section (2) provides that without prejudice to the generality of the powers conferred by sub-section (1), an order made thereunder may provide for any of the matters specified in clauses (a) to (j). Section 4 provides that the Central Government may by notified order direct that the power to make orders under section 3 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by -

(a) such officer or authority subordinate to the Central Government or

(b) such Provincial Government or such officer or authority subordinate to a Provincial Government

as may be specified in the direction.

From clause (b) of section 4, it will be evident that unless the Central Government has, by notified order, delegated its power to make orders under section 3, neither the Provincial Government nor any officer or authority subordinate to the Provincial Government can automatically make an order under section 3. Therefore, unless under section 4(b) the Central Government has delegated its power to makeorders under section 3 to the Deputy Secretary, Civil Supplies Department or the Food Controller, that officer cannot exercise those powers.

Sub-section (1) of section 4 ofthe Bombay Essential Commodites and Cattle (Control) Act, 1946, enacts that the Provincial Government so far as it appears to it to be necessary or expedient for maintaining or increasing the supply or for securing the equitable distribution and availability at fair prices, of any essential commodity or cattle may, by notified order, provide for -

(a) regulating or prohibiting the production, supply and distribution of, or trade and commerce in, such essential commodity;

(b) regulating themaintenance, supply and distribution of, or trade and commerce in, cattle.

Thus under section 4, the power to issue orders in respect ofthe matters specified therein solely vests in the Provincial Government. Under section 8 ofthe Act, however, it is open to the Provincial Government to direct that the power to make orders under section 4, shall also be exercisable by such officer or authority and in relation to such matters and subject to such conditions as may be specified in the Order. Unless, therefore, the powers of the Provincial Government to make orders under section 4 are specifically delegated to the Deputy Secretary, Civil Supplies Depa,tment or the Food Controller

under section 8, that officer cannot exercise these powers.

Adverting to the argument advanced by the Under Secretary, Civil Supplies Department, it may be stated that under sub-section (1) of section 49 of the Government of India Act, 1935, read with rule 13 of the Rules of Business framed under section 59(3) of the said Act, the Deputy Secretary, Civil Supplies Department, would no doubt be competent to authenticate orders issued by the Bombay Government but that in itself cannot be construed as empowering the Deputy Secretary to execute contracts for and on behalf of Government which really is a distinct matter governed by the provisions of section 175 of the Government of India Act, 1935. Sub-section (3) of section 175 of the Government of India Act, provides that all contracts and all assurances of property made in exercise of the executive authority of the Province under sub-section (1) shall be executed on behalf of the Governor by such persons and in such manner as he may direct or authorise.

Sd/-P.N.M.
19-11-46

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U.D. to
U.O.R. to C.S.D.'s Office, No. 8231
dated the 20th November 1946.

Office of the R.L.A.

The points urged by the Food Controller, Ahmedabad, are these :-

(a) that from the preamble to the Essential Supplies (Temporary Powers) Ordinance, 1946, it is obvious that the powers under the Defence of India Rules which were in force before 1st October 1946 are continued for a period, but no new powers are intended to be given by the Ordinance, consequently, if certain power did not exist under the Defence of India Rules, it cannot exist under the Ordinance whatever may be the wording of section 3 of the Ordinance.

(b) that fixation of prices of rationed articles in the statutorily rationed areas by the District Magistrates, was ultra vires, and hence similar orders cannot be passed under the Essential Supplies (Temporary Powers) rdinance, 1946.

As regards the first point, the preamble to the Essential Supplies (Temporary Powers) Ordinance, 1946, recites thus :-

> "Whereas an emergency has arisen which makes it necessary to provide for the continuance during a limited period of powers to control the production, supply and x distribution of, and trade and commerce in, foodstuffs (including edible oil-seeds and oils) cotton and woollen textiles, paper (including newsprint) petroleum andpetroleum products, spare parts of mechanically propelled vehicles, coal, iron, steel and mica."

It is no doubt true that no specific reference is made in thepreamble for power to control or fix the prices of essential commodities. But specific power is taken in that behalf under clause (c) of sub-section (2) of section 3 ofthe Ordinance. "The preamble cannot either restrict or extend the enacting part, when the language and the object and scope of the Act are not

open to doubt. It is not unusual to find that the enacting part is not exactly co-extensive within the preamble in many Acts of Parliament, although a particular mischief is recited, the legislative provisions extend by beyond it. The preamble is often no more than a recital of some of the inconveniences, and does not exclude any others for which a remedy is given by the sta ute. The evil recited is but the motive for legislation; the remedy may both consistently and wisely be extended beyond the cure of that evil, and if on a review of the whole Act a wider intention than that expressed in the preamble appears to be the xai real one, effect is to be given to it notwithstanding the less extensive import of thepreamble" (see pp. 41-42 of Maxwell on Interpretation of statutes). Consequently, when in the enacting part of the Ordinance (section 3(2)(c)) specific powers are taken for making orders for controlling the prices at which any essential commodity may be bought or sold, notwithstanding that such recital is not made in the preamble, effect has to be given to such provision. Consequently, there is no substance in thecontention raised by the Food Controller, Ahmedabad.

The second point taken by the Food Controller is that "The powers under the Defence of India Rules which were in force before 1st October 1946 are continued fora period, but that no new powers are intended to be given by the Ordinance." This argument would appear to find support from section 5 ofthe Ordinance which provides that until other provisions are made under the Ordinance, any order, whether notified or not, made by whatever authority under rule 80B or sub-rule (2) or sub-rule (3) of rule 81 ofthe Defence of India Rules, in respect of any matter specified in section 3, which was in force immediately before the commencement of this Ordinance shall, notwithstanding the expiration of the said rules, continue in force so a far ao far as consistent with this Ordinance

and be deemed to be an order made under section 3,
From the office note of theController of Rationing it would appear that "Rationing Orders do not fix prices and that prices have to be fixed in the rationed areas under Orders other than Rationing Orders". It is thus obvious that in pursuance of the powers of Government delegated to District Magistrates, under clause (b) of sub-rule (2) ofrule 81 ofthe Defence of India Rules, a District Magistrate could issue an order providing for controlling the prices or rates at which articles orthings of any description may be sold. Consequently, orders already issued by any authority under clause (b) of rule 81(2) of the Defence of India Rules controlling the prices which were in force immediately before the commencement of the Ordinance, would continue in force and would be deemed to be orders made under section 3 (see section 5). No. fresh orders fixing the prices can however be issued by District Magistrates unless the power to do so is delegated by the Central Government under section 4 of the Ordinance.

Sd/-P.N.M.
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U.O.R. to C. of R's Office, No. 310-Confl. dated the 10th November 1946.